The Employment Relationship: Creation and Termination of Employment

Chapter 3

Management Contexts, Relevant Laws, and Cases

MANAGEMENT CONTEXT	*MAJOR LEGAL ISSUES*	*RELEVANT LAW*	*ILLUSTRATIVE CASES*
Contract law principles	What are elements of a contract?	Contract law	*Jean*
Authority to sign contract	When is organization bound by employee?	Actual vs. apparent authority	*Huyett*
Hiring employees	Employment contract	Reassignment clause	*Monson*
	Rights of competitors	Covenant not to compete	*Northeastern Univ.*
Termination of contracts	Breach of contract	Perquisites	*Rodgers*
		Just cause termination	*O'Brien*
		Liquidated damages	*Kent State*
Employment references	Liability for accuracy of information	Negligent misrepresentation/fraud	*Randi W. Williams*
Recruiting employees	Liability for interfering with existing contract	Tortious interference with contractual relations	*Bauer*

Overview of Contract Law

Four Essential Elements of a Contract

- Agreement
  - Offer (offeror makes a conditional promise to the offeree)
  - Acceptance (unconditional agreement to the terms of the offer)
- Consideration
  - Mutual exchange of value
- Capacity
  - Legal competence of the parties
- Legality
  - Underlying agreement must not violate the law

Interpretation of Contracts

- Rules of Construction
- Oral Contracts vs. Written Contracts
- Statute of Frauds
- Disparity of Bargaining Power
- Limitations on Authority

Statute of Frauds Examples for Sport Organizations: Agreements Must Be in Writing

- Agreements for the sale of land or an interest in land (sport venue rental agreement)
- Contracts for the sale of goods costing $500 or more (team apparel orders)
- Contracts that cannot be performed within one year of the formation of the contract (game contracts and some employment agreements)

Disparity of Bargaining Power

- Disparity in power forces the signer to agree to the terms of the contract as dictated by the other party.
- No bargaining.
- Example:
  - National Letter of Intent between an institution and a student-athlete

Limitations on Authority to Contract & Capacity

Principal and Agent (an agent acts on behalf of the principal and must act consistent with their authority)

Actual authority and apparent authority

Legal Review

- Imagine that you represent an athlete who is 17 years old and considering a multi-year scholarship offer to play baseball or softball at a Division I school.
- Having read about the essential elements of a contract, the statute of frauds, and disparity of bargaining power, what would you take into account in reviewing this offer?

Remedies for Breach of Contract

- Compensatory damages
- Mitigation of damages
- Specific performance
- Liquidated damages and penalty provisions
- Rescission & Restitution
- Promissory estoppel

Competitive Advantage Strategies Overview of Contract Law

- Consider the worst-case scenario.
- Make sure contracts serve the interests of the organization.
- Put all contracts in writing.
- Avoid making promises that go beyond the written agreement.
- Enforce the limits of actual authority.

Employment Agreements in Sport

Types of Employment Arrangements

Employment at Will

Contractual Employment Agreement

Employment at Will

Employer may fire an employee at any time, for any reason (or for no reason).

Employee can quit at any time, for any reason.

In practice, the rule favors employers more than employees.

Exceptions to Employment at Will

Public Policy Exceptions

- Discrimination
- Whistleblowing
- Cooperation in an investigation against the company
- Filing unfair labor practice charges
- Reporting safety hazards/violations

Competitive Advantage Strategies Employment at Will

- Develop personnel manuals carefully.
- Use language that is consistent with employment contracts or relationships.
- Consult an attorney when developing employment policies related to employment at will.
- Be familiar with your state's whistleblower statutes and stance on covenant of good faith and fair dealing.

Contract Employees

- Written or Verbal Agreement on Basic Job Details
  - Start date
  - Salary
  - Job duties
  - Duration
- Best practice is to use written agreements to avoid being considered an employment at will

Standard Provisions in Employment Agreements

- Term (duration) of the contract
- Duties and responsibilities
- Compensation
- Clauses related to termination
  - Termination without cause
  - Termination with cause
  - Liquidated damages
  - Wrongful Termination

Issues Related to Termination

Termination for just cause:

- Failure to perform
- Neglect of duties/responsibilities
- Willful misconduct
- Behavior that adversely affects an individual or organization's image (moral turpitude)

Termination without cause:

- Wrongful termination vs. liquidated damages

Additional Issues in Coaches' Employment Agreements

- Important Unique Provisions
  - Mitigation Clauses
  - Reassignment Clauses
  - Restrictive Covenants
  - Morals Clauses
- Including NCAA requirements in contracts
- Dispute resolution and separate agreements

Competitive Advantage Strategies
Coaches' Contracts

- Develop contracts with care; cover all necessary provisions.
- Pay attention to termination clauses and liquidated damages provisions.
- Delineate prohibited behavior and make sure it's understood.
- Specify whether an employee can be reassigned to another position in the organization.
- Negotiate morals and noncompete clauses carefully.

Legal Review

- What steps would you take to avoid a liquidated damages clause being invalidated as a penalty provision?
- What do you think of people who have acted as whistleblowers? Did they do the right thing, even if it put someone's job (or more) in jeopardy?

Tort Theories and Employment

Defamation

Negligent Misrepresentation/Fraud

Tortious interference with contractual relations

Competitive Advantage Strategies
Tort Theories and Employment

- When providing employee references, stick to the facts contained in the employee's file.
- Give a balanced reference—with both strengths and weaknesses.
- Do not try to convince a recruit to breach an existing employment contract.